St. Louis Cardinals, LLC v. Lewis Doc. 23

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ST. LOUIS CARDINALS, LLC, Plaintiff, vs. DOUGLAS J. LEWIS d/b/a STL Products, Defendant.	)	No. 4:07-CV-473 (CEJ)

MEMORANDUM AND ORDER

This matter is before the Court on defendant's motion to dismiss plaintiff's complaint. Plaintiff has filed an opposition and the issues are fully briefed.

Plaintiff, the owner of the St. Louis Cardinals Major League Baseball club, alleges that defendant Douglas Lewis, doing business as STL Products, sells merchandise with images that infringe plaintiff's marks, including "GO CARDS" and "I ❤ ST. LOUIS CARDINALS." According to the complaint, defendant has obtained state registration for several marks that plaintiff claims are confusingly similar to its CARDINALS marks. Plaintiff asserts claims of trademark infringement, in violation of the Lanham Act, 15 U.S.C. § 1114(1) (Count I), false designation of origin in violation of the Lanham Act, 15 U.S.C. § 1125(a) (Count II), unfair competition under the common law of Missouri (Count III), and violation of the Missouri Merchandising Practices Act, Mo.Rev.Stat. §§ 407.010 *et seq.* (Count IV). Plaintiff also seeks cancellation of defendant's state registrations for the allegedly confusing marks (Counts V and VI). Defendant, who proceeds *pro se*, moves to dismiss plaintiff's

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complaint, arguing that plaintiff violated due process by filing suit against a small business owner without first attempting to rectify the issues by meeting with him.

Discussion

In moving for dismissal, defendant cites Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986), for the proposition that the inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson addressed the standard for summary judgment pursuant to Fed.R.Civ.P. 56(c). The present motion is not supported by documentary evidence or affidavits as required for a motion for summary judgment; nor has defendant filed a statement of uncontroverted material facts, as required by E.D. Mo. Local Rule 4.01(E). To the extent that defendant seeks summary judgment, the motion will be denied.

Defendant filed the present motion after he filed an answer and thus it cannot be deemed to be a motion to dismiss for failure to state a claim for relief, which must be filed before service of a responsive pleading. Fed.R.Civ.P. 12(b)("A motion making any of [the defenses enumerated in Rule 12(b)] shall be made before pleading if a further pleading is permitted."). It may be appropriate, however, to consider the motion as one for judgment on the pleadings pursuant to Fed.R.Civ.P. 12(c). Judgment on the pleadings may not be granted unless the moving party has clearly established that no material issue of fact remains to be resolved and the party is entitled to judgment as a matter of law. United States v. Any and all Radio Station Transmission Equipment, 207 F.3d 458, 462 (8th Cir. 2000).

To prevail on its claims of trademark infringement, plaintiff must prove that defendant's use of its marks is likely to cause confusion as to the origin of the products. "The ultimate inquiry always is whether, considering all the circumstances, a likelihood exists that consumers will be confused about the source of the allegedly infringing product." Hubbard Feeds, Inc. v. Animal Feed Supp., Inc., 182 F.3d 598, 602 (8th Cir. 1999). Plaintiff's complaint sets forth sufficient factual allegations to state a plausible claim for relief. Defendant's argument that plaintiff should have attempted to rectify matters with him before filing suit does not meet his burden to establish that he is entitled to judgment as a matter of law: trademark law does not require plaintiff to establish that it attempted to negotiate with an alleged infringer before seeking relief.

Accordingly,

IT IS HEREBY ORDERED that defendant's motion to dismiss [Doc. #16] is **denied.**

CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 12th day of July, 2007.